



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AYKHAN AKHUNDOV v. AZERBAIJAN

(Application no. 43467/06)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Domestic courts' decisions invalidating property exchange contract between the applicant and a private party resulting in the annulment of the applicant's rights over the property • Arbitrary admission of contract invalidation claim • Failure to provide adequate reasons • Stereotypical decisions by upper instance courts
Art 46 • Execution of judgment • Task of competent domestic court, if applicant requests reopening of case, to evaluate circumstances and choose appropriate means to ensure maximum possible reparation

STRASBOURG

1 June 2023

FINAL

01/09/2023

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Aykhan Akhundov v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,

Krzysztof Wojtyczek,

Alena Poláčková,

Lətif Hüseynov,

Ivana Jelić,

Gilberto Felici,

Erik Wennerström, *judges*,

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 43467/06) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Azerbaijani national, Mr Aykhan Nazim oglu Akhundov (“the applicant”), on 9 October 2006;

the decision to give notice to the Azerbaijani Government (“the Government”) of the application;

the parties’ observations;

Having deliberated in private on 9 May 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns civil proceedings relating to a property dispute between the applicant and a private company. The applicant complained that those proceedings had been unfair because the reasons given by the domestic courts for their decisions had been arbitrary. He also complained that as a result of the unfair domestic proceedings his right to peaceful enjoyment of his possessions had been violated. Lastly, the applicant complained that his right to fair trial had been breached also because the domestic courts had admitted for examination the company’s belated appeal and because he had not been informed about the appellate court’s hearing.

THE FACTS

2. The applicant was born in 1965 and lives in Baku. He was represented by Ms S. Suleymanova and Mr J. Suleymanov, lawyers practising in Baku.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case may be summarised as follows.

I. CONTRACTS SIGNED BY THE APPLICANT

5. On 13 April 1998 a “technical passport” was issued in respect of a State-owned haulage company, *Azərxaricinəqliyyat*, confirming that it possessed, *inter alia*, (i) a plot of land measuring 0.873 hectares (“the plot of land”) and (ii) a brick wall with metal gates, which surrounded the plot of land, on which stood an unfinished non-residential building measuring 117.5 square metres, ground surface, and a lavatory building (*sanitar qovşağı*) measuring 22.04 square metres, ground surface, (“the buildings”).

6. On 3 August 1998 *Azərxaricinəqliyyat* was privatised and as a result a private joint-stock company, Azintrans, established. Azintrans was registered in 1999. As with *Azərxaricinəqliyyat*, the activities in which Azintrans engaged related to the field of haulage.

7. The buildings indicated in the above-mentioned technical passport were transferred to Azintrans to constitute its assets, as the legal successor to *Azərxaricinəqliyyat*.

8. In accordance with the relevant domestic legislation applicable to privatisation of State-owned enterprises, the plot of land indicated in the technical passport remained State property, but was given over to the use of Azintrans.

9. The applicant was one of Azintrans’s shareholders. He held 3,800 shares in Azintrans (which constituted 4.64% of the total number of shares). At the time in question each share had a value of 10,000 old Azerbaijani manats (AZM) (the equivalent of two Azerbaijani manats (AZN)).

10. On an unspecified date the applicant proposed to the executive board of Azintrans that he exchange his shares in the company for the above-mentioned buildings in order to use them to undertake independent commercial activities.

11. On 28 June 2003, the applicant’s proposal was presented to a shareholders’ meeting. The meeting decided to grant the applicant’s request and to exchange “the property belonging” (*məxsus əmlak*) to it, that is the buildings in question, for the applicant’s shares. The shareholders’ meeting also decided that the above-mentioned plot of land would be given over to the applicant for use by him.

12. On 11 July 2003 Azintrans, represented by the chairman of its executive board, G.H., concluded an exchange contract with the applicant. The contract stipulated the same conditions as those contained in the decision of the shareholders’ meeting (see paragraph 11 above). The contract was certified by a notary (Baku State notary no. 14).

13. Following the signing of the exchange contract, the parties carried out their obligations, as set out in that contract.

14. On an unspecified date the applicant lodged an application with the municipality of Bilajari (“the Municipality”) – which was located within the

Binagadi District of Baku – for his right to use the plot of land to be formally registered. According to the applicant’s application, the plot of land was situated in the Binagadi District of Baku, and thus fell under the jurisdiction of the Municipality.

15. On 9 September 2003 the Municipality adopted a decision (no. 357) giving the plot of land to the applicant on a long-term lease (*uzunmüddətli istifadə üçün icarə*). On the same day, the applicant concluded with the Municipality a thirty-year land lease agreement in respect of the plot of land.

16. During an unspecified period, the applicant completed the unfinished part of the buildings, refurbished and expanded them, and reinforced with concrete one part of the brick wall surrounding the plot of land. Without counting the wall and its metal gates, the buildings in their enlarged state measured 1,957.6 square metres in total and consisted of an administrative building, cafeteria, automobile repair workshop, lavatory, and a gatehouse. The applicant used the plot of land and the buildings for his commercial activities in the field of haulage.

17. On an unspecified date the applicant applied to the State Construction and Architecture Committee’s Main Department for Technical Inventory and the Registration of Property Rights (*Dövlət Tikinti və Arxitektura Komitəsinin Baş Dövlət Texniki İnventarlaşdırma və Mülkiyyət Hüquqlarının Qeydiyyatı İdarəsi* – “the Main Property Registration Department”), in order to obtain a technical passport for the buildings in their final enlarged state.

18. On 20 October 2003 the Main Property Registration Department issued the technical passport requested by the applicant; the passport contained a reference to the Municipality’s above-mentioned decision of 9 September 2003.

II. PROCEEDINGS BEFORE THE FIRST-INSTANCE COURT AND THE REGISTRATION OF THE APPLICANT’S RIGHTS

19. On an unspecified date the applicant lodged an application with the Baku City Executive Authority’s Office for Technical Inventory and the Registration of Property Rights (*Bakı şəhəri Texniki İnventarlaşdırma və Mülkiyyət Hüquqlarının Qeydiyyatı İdarəsi* – “the Baku Property Registration Office”), seeking to obtain a certificate confirming his ownership right over the buildings in their enlarged state, on the basis of the above-mentioned exchange contract of 11 July 2003 and technical passport dated 20 October 2003.

20. The Baku Property Registration Office did not allow the applicant’s application; accordingly, in June 2004, the applicant brought an action against it in the Narimanov District Court.

21. On 15 July 2004 the Narimanov District Court granted the applicant’s action and ordered the Baku Property Registration Office to issue a certificate

confirming the applicant's ownership right over the buildings in their enlarged state.

22. On 22 July 2004 the Narimanov District Court adopted a "supplementary judgment" granting a request lodged by the applicant that it order the Baku City branch of the State Land and Cartography Committee (*Dövlət Torpaq və Xəritəçəkmə Komitəsinin Bakı şəhəri Torpaq Şöbəsi* – "the Land Department") to issue a certificate confirming the applicant's "permanent right to use the plot of land" (*torpaqdan daimi istifadə hüququna dair dövlət aktı*).

23. A month after they were adopted, both judgments of the Narimanov District Court entered into force.

24. On 23 September 2004 the Baku Property Registration Office issued a certificate confirming the applicant's ownership right over the buildings in their enlarged state (the certificate indicated that the buildings measured 1,911.5 square metres).

25. On 29 December 2004 the Land Department issued a certificate confirming the applicant's permanent right to use the plot of land (the certificate indicated that the plot of land measured 0.7637 hectares).

III. APPEAL LODGED BY AZINTRANS AND EXAMINATION OF THE CASE BY THE APPELLATE COURT

26. It appears that sometime in 2005 Azintrans decided to reclaim the buildings and the plot of land that it had given to the applicant under the exchange contract of 11 July 2003.

27. On 2 June 2005 Azintrans (represented by the chairman of its executive board, G.H.) lodged an appeal against the judgments of 15 July and 22 July 2004 of the Narimanov District Court, seeking that those judgments be quashed.

28. Azintrans argued as follows:

(i) the plot of land had been the property of the State; accordingly, only the Ministry for Economic Development had had the right to dispose of it, so Azintrans could have handed over the plot of land to the applicant for his own use only with the consent of that Ministry;

(ii) the Municipality had had no right to sign the land lease agreement of 9 September 2003; and

(iii) the enlargement of the initial buildings had been carried out by the applicant without proper authorisation, and had therefore been unlawful.

29. Concerning the procedural issues, Azintrans complained that the Narimanov District Court should either have (i) replaced the Baku Property Registration Office with the Ministry for Economic Development as a respondent in the case or (ii) invited the latter to join the proceedings as a second respondent. In addition, the court should have invited Azintrans to participate in the proceedings as a "third party whose interests were affected".

30. The Court of Appeal admitted Azintrans's appeal for examination on the merits.

31. The appellate court invited representatives of the Ministry for Economic Development and of the Land Department to participate in the proceedings as "interested parties". The respondent party – the Baku Property Registration Office (see paragraphs 20-21 above) – asked that the case be examined in its absence.

32. During the appellate hearing the applicant argued that Azintrans had exchanged the buildings and the plot of land (which had been in the company's lawful possession) for his shares. Consequently, he (the applicant) had had the right to register those assets in his own name. The applicant asked the appellate court to uphold the first-instance court's judgments of 15 July and 22 July 2004.

33. The representative of the Ministry for Economic Development stated that the judgments of 15 July and 22 July 2004 had not damaged the Ministry's interests. He also emphasised that the applicant had "made investments" in the buildings and the plot of land. The representative of the Ministry for Economic Development and the representative of the Land Department asked the appellate court to uphold the first-instance court's judgments.

34. On 3 August 2005, the Court of Appeal granted Azintrans's appeal and quashed the Narimanov District Court's judgments of 15 July and 22 July 2004 delivered in respect of the applicant's action (see paragraphs 20-22 above). The Court of Appeal ordered that the certificates issued on the basis of those judgments – namely the certificate dated 23 September 2004 confirming the applicant's ownership right over the buildings and the certificate of 29 December 2004 confirming the applicant's right to use the plot of land – be annulled.

35. The Court of Appeal based its judgment on Azintrans's above-detailed arguments (see paragraph 28 above). However, it also gave the following additional reasons for its judgment:

(i) at the time when Azintrans had signed the exchange contract dated 11 July 2003, Azitrans had only possessed a technical passport in respect of the buildings in question and not a certificate confirming its ownership right; and

(ii) the Baku Property Registration Office had had no right to issue the certificate of 23 September 2004 confirming the applicant's ownership right over the buildings, because under Presidential Decree no. 113 of 10 August 2004, only the Ministry for Economic Development's Immovable Property Registry Service had had the right to issue such a certificate.

36. The Court of Appeal further noted that the representative of the Ministry for Economic Development supported the appeal lodged by Azintrans and had asked it to quash the first-instance court's judgments, and

that the representative of the Land Department had asked the appellate court to deliver a fair decision.

IV. QUASHING OF THE APPELLATE COURT'S JUDGMENT BY THE SUPREME COURT

37. The applicant lodged a cassation appeal against the appellate court's judgment of 3 August 2005, asking the Supreme Court to quash that judgment.

38. The applicant argued, in particular, that he had obtained the above-mentioned rights over the buildings and the plot of land lawfully, given that those assets had been in Azintrans's lawful possession, and that company had exchanged them for his shares. Consequently, he (the applicant) had had the right to register those assets in his own name. Furthermore, the plot of land had been situated in the Binagadi District of Baku (and had fallen within the jurisdiction of the Municipality); therefore, the Municipality had had the right to sign the land lease agreement of 9 September 2003. Moreover, when the first-instance court had adopted its judgment of 15 July 2004, obliging the Baku Property Registration Office to issue the certificate, the presidential decree of 10 August 2004 had not yet been adopted. As to the enlargement of the buildings, the applicant acknowledged that he had done this without first acquiring the relevant permits; he had therefore lodged his action in the Narimanov District Court to be given the documentation necessary to regularise the situation.

39. The applicant also argued that the appellate court had misrepresented the position of the Ministry for Economic Development in respect of the case: contrary to the text of the appellate court's judgment of 3 August 2005, the Ministry for Economic Development had not supported the appeal lodged by Azintrans, and the representative of the Ministry for Economic Development had stated that the judgments of the first-instance court had been lawful.

40. Furthermore, in respect of the procedural issues, the applicant complained that Azintrans had submitted its appeal belatedly. In that regard, the applicant argued that the company had been aware of the proceedings before the Narimanov District Court while they had been ongoing. Azintrans had also been aware of the refurbishment and enlargement of the buildings in question from the time that that work had started.

41. On 24 August 2005 the Ministry for Economic Development lodged a cassation appeal against the judgment of 3 August 2005, complaining that in that judgment the Court of Appeal had misrepresented the Ministry's position regarding the case: contrary to what the appellate court had written in its judgment, the representative of the Ministry for Economic Development had in fact supported the judgments of the first-instance court and had opposed Azintrans's appeal.

42. The Ministry for Economic Development also argued that the Court of Appeal had annulled the applicant's right to use the plot of land without inviting representatives of the Municipality to take part in proceedings, and that the judgment of 3 August 2005 had therefore been in violation of the rights of the Municipality.

43. On 14 November 2005 the Supreme Court quashed the judgment of 3 August 2005 and remitted the case to the appellate court for re-examination.

44. The Supreme Court emphasised, in particular, that the Court of Appeal had:

- (i) misrepresented the positions of the Ministry for Economic Development and of the Land Department regarding the case: in point of fact, the Ministry for Economic Development had supported the applicant's claims, and the representatives of both the Ministry for Economic Development and the Land Department had asked the appellate court to uphold the judgments of the first-instance court;

- (ii) contented itself with merely stating that the Baku Property Registration Office had had no right to issue the certificate of 23 September 2004 and had failed to provide adequate reasons for its conclusion that the applicant's ownership right over the buildings in question should not have been registered in the first place;

- (iii) failed to replace the Baku Property Registration Office with a proper respondent – namely the Ministry for Economic Development, which, as the appellate court had pointed out, had had the right to issue that certificate confirming the applicant's ownership right over the buildings;

- (iv) failed to invite the Municipality to the proceedings; and

- (v) failed to verify who (namely, the State or the municipality) was the owner of the plot of land.

45. The Supreme Court also emphasised the fact that the appellate court had examined the appeal submitted by Azintrans almost one year after the execution of the Narimanov District Court's judgments.

V. RE-EXAMINATION OF THE CASE BY THE APPELLATE COURT, AND THE SUPREME COURT'S FINAL DECISION

46. On 27 February 2006 the Municipality sent a letter in response to the Court of Appeal's request for information. In that letter the Municipality alleged that since 1 January 2001 the right to give permission for the use of land had been transferred from the district executive authorities to the municipalities. The Municipality asserted that that change had been introduced by a "presidential decree".

47. In February 2006 the Court of Appeal sent to the applicant a summons to attend a hearing on the basis of appeals "lodged by the [Baku Property Registration Office] and another [party] against the judgment of 15 July 2004 of the Narimanov District Court". The hearing was scheduled for 28 March

2006. Copies of the summons were addressed to Azintrans, the Baku Property Registration Office, the Land Department, and the Ministry for Economic Development. It appears that the reference in the summons to an appeal lodged by the Baku Property Registration Office was a technical mistake and that the scheduled hearing concerned the re-examination of the appeal lodged by Azintrans against the first-instance court's judgments of 15 July and 22 July 2004.

48. However, the Court of Appeal re-examined Azintrans's appeal in a hearing held on 7 March 2006.

49. According to the Court of Appeal's judgment of 7 March 2006, in the same proceedings Azintrans, acting as a "third party bringing an independent claim" (*müstəqil tələb sürən üçüncü şəxs*), additionally lodged a new claim against the applicant, Baku State Notary no. 14 and the Municipality; by that claim the company (Azintrans), *inter alia*, contested the validity of the exchange contract of 11 July 2003 (a copy of the claim was not submitted to the Court). The Court of Appeal stated that the claim had been lodged under Articles 55.1 and 372.5 of the Code of Civil Procedure and that, under Articles 372.1 and 372.5 of the Code of Civil Procedure, the Court of Appeal had the right to examine it (see paragraphs 58 and 60 below).

50. Only a representative of Azintrans participated in the hearing held on 7 March 2006 before the Court of Appeal. Neither the applicant nor the other parties involved in the case initially or at later stages attended that hearing. According to the applicant, he was not summoned to the hearing of 7 March 2006.

51. The Court of Appeal granted Azintrans's appeal and quashed the judgment of 15 July 2004 and the supplementary judgment of 22 July 2004 of the Narimanov District Court delivered in respect of the applicant's action (see paragraphs 20-22 above).

52. Furthermore, the Court of Appeal granted the above-mentioned new claim lodged by Azintrans against the applicant, Baku State Notary no. 14 and the Municipality. Consequently, the court: declared invalid the exchange contract of 11 July 2003, the land lease agreement of 9 September 2003 and the Municipality's decision of 9 September 2003; ordered the demolition of the construction work undertaken by the applicant during the above-mentioned refurbishment and enlargement work (see paragraph 16 above); and ordered that the applicant and Azintrans be "returned in their initial state" (which meant that the applicant had to return to Azintrans the buildings and the plot of land that he had obtained on the basis of the exchange contract of 11 July 2003).

53. Despite ordering that the applicant and Azintrans be "returned in their initial state", the appellate court also ordered that Azintrans pay the applicant the monetary value of his 3,800 shares, instead of returning those shares.

54. The Court of Appeal gave the following reasons for its judgment:

(i) at the time when the exchange contract of 11 July 2003 had been concluded the plot of land had been the property of the State, so consequently, only the Ministry for Economic Development had had the right to dispose of it – therefore, Azintrans could have given the plot of land over to the applicant’s use only with the consent of the Ministry for Economic Development;

(ii) at the time when Azintrans had signed the exchange contract of 11 July 2003 with the applicant, the company (Azintrans) had held only a technical passport in respect of the buildings in question and not a document confirming its ownership right;

(iii) the Baku Property Registration Office had had no right to issue the certificate of 23 September 2004 confirming the applicant’s ownership right over the buildings, because, under Presidential Decree no. 495 of 11 June 2001, the right to issue such certificates had first been held by Ministry for Economic Development, and then, under Presidential Decree no. 113 of 10 August 2004, by the Ministry for Economic Development’s Immovable Property Registry Service; and

(iv) the Municipality had failed to appear at the hearing and prove that the plot of land had been its property.

55. The applicant lodged a cassation appeal against the judgment of 7 March 2006 (a copy of the appeal was not submitted to the Court). According to the applicant, in that appeal he (i) reiterated all his earlier complaints and arguments (see paragraphs 38-40 above), (ii) argued that the invalidation of the exchange contract on the basis of Azintrans’s new claim lodged during the second set of proceedings before the appellate court in March 2006 (see paragraphs 49 and 52 above) had been unlawful and arbitrary, and (iii) complained of the failure of the appellate court to inform him that the hearing of 7 March 2006 was to take place.

56. According to the Government, in his cassation appeal the applicant did not raise either his allegation (see paragraph 40 above) that the appeal lodged by Azintrans in June 2005 had been belated or a complaint about the alleged failure of the appellate court to inform him of the hearing of 7 March 2006.

57. By a decision of 7 June 2006, the Supreme Court dismissed the applicant’s cassation appeal and upheld the Court of Appeal’s judgment of 7 March 2006. The reasoning given by the Supreme Court was nearly identical to that of the appellate court’s judgment of 7 March 2006.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

58. The relevant part of Article 55 of the 1999 Code of Civil Procedure (“the CCP”), as in force at the material time, provided:

Article 55. Third parties bringing an independent claim about the subject of a dispute

“55.1. Third parties lodging an independent claim regarding the subject of a dispute can interfere in a case by bringing an action against one or both parties, [at any time] before a court adopts its judgment.”

59. The relevant part of Article 360 of the 1999 Code of Civil Procedure, as in force at the material time, provided:

Article 360. Time-limit for submission of an appeal complaint

“An appeal complaint can be lodged within one month from the date on which a [first-instance] court’s judgment was provided (received).”

60. The relevant part of Article 372 of the CCP, as in force at the material time, provided:

Article 372. Limits on the examination of a case in an appellate instance court

“372.1. An appellate court shall, as a full-fledged court, examine a case on the merits on the basis of evidence already available in that case and on [evidence] submitted additionally [at a later stage of the proceedings].

...

372.5. Parties may lodge new claims for examination with the appellate court only where these claims are directed at resolving the matters [in question] on the basis of ... rejecting the claims lodged by the counterparty, ... establishing a fact or submitting information concerning a [certain] fact.”

61. Chapter 44-1 of the CCP (added to the CCP in 2004 and comprised of Articles 431-1 to 431-4) provides for, *inter alia*, the procedure for reopening of the domestic civil proceedings following adoption of the relevant judgment by the European Court of Human Rights finding a violation of the Convention. Pursuant to Article 431.2, under this procedure, the Plenum of the Supreme Court examines the case only on points of law. After the examination of the case, the Plenum of the Supreme Court may decide, *inter alia*, to quash the lower courts’ rulings or decisions and remit the case to the relevant lower court, or to vary the decision of the cassation-instance court, or to quash the decisions of the lower courts and to terminate the proceedings (Article 431-4.3 of the CCP). Pursuant to Article 431-3.1, the Plenum of the Supreme Court shall examine the case by written procedure and within three months after the relevant judgment of the European Court of Human Rights is submitted to the Supreme Court.

62. The relevant part of Article 139 of the 2000 Civil Code, as in force at the material time, provided:

Article 139. State registration of rights over movable and immovable property

“139.1. An ownership right and other rights over immovable property, restrictions on these rights, their creation, their transfer to others, and their annulment shall be registered by the State. An ownership right, the right to use [property], a mortgage,

easements, and other rights over an immovable property shall be registered in cases provided by the present Code and [other] legislation.”

63. The relevant part of Article 146 of the 2000 Civil Code, as in force at the material time, provided:

Article 146. Emergence of the right over an immovable property

“A right over an immovable property [exists] from the date of its registration in the State register of immovable property. The content of the registered right may be established by [relevant] documents or in some other way.”

64. Article 242 of the 2000 Civil Code, as in force at the material time, provided:

Article 242. Possession and the use of a plot of land

“242.2. A person who has been given a plot of land for [his or her own] use may lease it or give it [to someone else] for [that person’s own] use for free only upon [receiving the] consent of the owner [of that plot of land].”

65. The relevant part of Article 354 of the 2000 Civil Code, as in force at the material time, provided:

Article 354. Time-limits concerning invalid deals

“354.2. A claim regarding the invalidation of a disputed deal ... may be lodged within one year of the day on which a claimant became aware or ought to have been aware of the circumstances constituting the basis for the invalidation of that deal.”

66. The relevant part of Article 662 of the 2000 Civil Code, as in force at the material time, provided:

Article 662. Exchange contract

“662.1. Under an exchange contract, the parties [to that contract] shall undertake to transfer to [each] other’s property one thing [əşya] in exchange for another thing [received].

662.2. The rules concerning a sale and purchase contract shall [also] be applicable ... to an exchange contract.”

67. The relevant part of Article 66 of the 1999 Land Code, as in force at the material time, provided:

Article 66. Documents confirming rights over plots of land

“5. A right over [a plot of] land shall be registered in the State register of immovable property, in accordance with the [relevant] legislation.”

68. The relevant part of Article 67 of the 1999 Land Code, as in force at the material time, provided:

Article 67. Compulsory State registration of rights over plots of land

“1. The rights over plots of land, including the rights that belong to ... State authorities and municipalities, shall be registered in the State cadastral register and State land register, ... as well as ... in the State register of immovable property.”

69. The relevant part of Article 88 of the 1999 Land Code, as in force at the material time, provided:

Article 88. Specifics of obtaining rights over a plot of land arising from the [signing] of transactions concerning an immovable property [located on that plot of land]

“1. Upon the transfer of the ownership right over a building, construction or enterprise (or facility) to another person, the ownership right over the plot of land on which they are situated is also transferred to the same person in accordance with [the rules set out in] this Article, within the same scope as when [that right over that plot of land] belonged to the previous owner of the building, construction or enterprise, and subject to the same conditions and restrictions on use of the [mentioned] plot of land.

2. Upon the sale of a State-owned building, construction or enterprise (or facility) into private ownership, ... the plot of land on which that immovable property is situated is also [either] sold [into private ownership] or leased, with the right to purchase [it at a later date].”

70. The relevant part of Article 8 of the 2000 Law on the Privatisation of State Property, as in force at the material time, provided:

Article 8. Seller of State property

“8.1. In the course of the process of privatisation in the Republic of Azerbaijan, the relevant executive authority [namely, the Ministry for Economic Development] shall act as the seller of State property.

8.2. The seller of State property performs the following functions:

8.2.1. keeps a register of State property, in accordance with the relevant procedure ...”

71. The relevant part of Article 29 of the 2000 Law on the Privatisation of State Property, as in force at the material time, provided:

Article 29. Official documentation of deals involving the privatisation of State property

“29.1. During the privatisation of State property, except for specialised auctions, a sale and purchase contract shall be signed between the seller of State property and a buyer, in accordance with the Civil Code ..., the present Law, and the [Second] State Programme [on the Privatisation of State Property in the Republic of Azerbaijan].

...

29.5. A buyer’s ownership right over a privatised facility shall be documented by means of a certificate confirming the ownership right issued by the seller of State property [namely, by the Ministry for Economic Development].

29.6. Owners of privatised facilities may [i] purchase or [ii] lease with the right to purchase the plots of land on which [such] facilities are situated, in accordance with the

procedure specified by the relevant legislation, as well as use those plots of land permanently or temporarily, under the relevant decision (agreement). ...”

72. The relevant parts of Article 9 of the Second State Programme on the Privatisation of State Property in the Republic of Azerbaijan, approved by Presidential Decree no. 383 of 10 August 2000, as in force at the material time, provided:

“9.1. Plots of land underneath privatised State-owned enterprises or facilities, or underneath facilities constructed by private individuals or non-governmental legal entities, shall be sold by the Ministry for Economic Development to the owners of those enterprises or facilities in accordance with the relevant legislation. ...”

73. Presidential Decree no. 291 of 6 March 2000, as in force at the material time, designated the Ministry for Economic Development as the authority responsible for leasing plots of land underneath State enterprises and facilities undergoing privatisation.

74. It follows from Presidential Decree no. 113 of 10 August 2004 and the 2004 Law on the State Register of Immovable Property, as in force at the material time, that there was no unified register of immovable property prior to the entry into force of the above-mentioned decree; registration was carried out by various authorities, including the Ministry for Economic Development, the State Land and Cartography Committee, the State Construction and Architecture Committee, the Baku Property Registration Office, and other bodies and local executive authorities.

75. Under Presidential Decree no. 495 of 11 June 2001, as in force at the material time, the Ministry for Economic Development had the right to issue “certificates confirming ownership rights over privatised State enterprises and facilities (property) [or] privatised immovable property obtained on the secondary [real estate] market (*təkrar bazarda əldə edilən özəlləşdirilmiş daşınmaz əmlaka*)”.

76. Presidential Decree no. 113 of 10 August 2004 (which entered into force on 12 August 2004), as in force at the material time, designated the Ministry for Economic Development’s Immovable Property Registry Service as the authority that would have the right to maintain and manage the State register of immovable property, in accordance with the 2004 Law on the State Register of Immovable Property.

77. Under Article 10 of the 2004 Law on the State Register of Immovable Property (which entered into force on 10 August 2004), as in force at the material time, a person applying for State registration of an immovable property had to present, *inter alia*, the following documents, together with [his or her] application for State registration: the plan and the dimensions of the plot of land on which the immovable property in question stood; a “technical passport” in respect of the buildings or other immovable property located on that plot of land; and a document serving as the “grounds” for registration (such as, for example, a notary-certified contract concerning the immovable property in question or a judgment that had entered into force).

78. Under the practice established by the various bodies (summarised in paragraph 74 above) that carried out the registration of immovable property prior to the entry into force of the 2004 Law on the State Register of Immovable Property, the list of the documents required by those bodies was similar to that provided by Article 10 of the 2004 Law on the State Register of Immovable Property.

79. Under Article 4 of the “Regulations setting the rules concerning the sale of plots of land underneath State enterprises and facilities undergoing privatisation” (which were approved by Presidential Order no. 659 of 19 December 1997), as in force at the material time, a non-foreign owner of a privatised enterprise or facility had the “priority right to purchase” (*ilk növbədə satın almaq hüququ*) plots of land underneath such an enterprise or facility. Under Article 12 of the Regulations, non-foreign owners of a privatised enterprise or facility who wished to buy the plot land on which that enterprise or facility stood had to submit their application to the Ministry for Economic Development, together with, *inter alia*, a “technical passport” in respect of that privatised enterprise or facility, a copy of a certificate confirming the non-foreign owner’s ownership right over that enterprise or facility, and, when applicable, a copy of the relevant entry in the register of shareholders.

80. Similarly, according to the “Rules on the use of land plots underneath State enterprises undergoing privatisation” approved by a decision of the Cabinet of Ministers, owners of a privatised enterprise or facility had the right to lease such plots of land. In order to sign a lease contract, the owners of a privatised enterprise or facility had to present to the Ministry for Economic Development, together with their application, *inter alia*, a “technical passport” in respect of that privatised enterprise or facility.

81. Under Article 2 of the “Regulations setting the rules concerning the sale of plots of land underneath State enterprises and facilities undergoing privatisation” (which were approved by Presidential Order no. 659 of 19 December 1997), as in force at the material time, “plots of land underneath a State enterprise or facility undergoing privatisation” meant plots of land that had been in use by that State enterprise or facility, within the boundaries indicated in its “technical passport”, at the time of privatisation.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

82. The applicant complained under Article 6 § 1 of the Convention that the proceedings relating to the property-related dispute had been unfair because the reasons given by the domestic courts for their decisions had been arbitrary. The relevant part of Article 6 reads:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

83. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

84. The applicant argued, *inter alia*, that the domestic courts had failed to provide adequate reasons for their findings that the exchange contract signed between him and Azintrans should be invalidated and that his rights over the buildings and the plot of land be annulled. In particular, the courts had failed to take into consideration the fact that those assets had been in Azintrans’s lawful possession before the company had decided to exchange them for the applicant’s shares. Furthermore, when dealing with the company’s new claim lodged during the second set of proceedings before the appellate court in March 2006 (see paragraph 49 above), the courts had ignored the fact that the annulment of the exchange contract had been in breach of the relevant procedural legislation – namely, Article 354 of the Civil Code (see paragraph 65 above).

85. The Government argued that the appellate court’s judgment (and the Supreme Court’s decision upholding that judgment) to admit for examination and grant Azintrans’s request to invalidate the exchange contract had been sufficiently reasoned, containing as it had references to the relevant procedural legislation – namely Articles 55.1, 372.1 and 372.5 of the Code of Civil Procedure (see paragraphs 49, 58 and 60 above). Furthermore, the courts had adequately stated the reasons why the exchange contract and the land lease agreement had been in breach of the relevant domestic legislation and had addressed all the arguments raised by the applicant or by other parties to the proceedings.

The Court’s assessment

(a) Applicable principles

86. The Court reiterates that Article 6 § 1 of the Convention obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument (see *Perez v. France* [GC], no. 47287/99, § 81, ECHR 2004-I). The question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 § 1, can only be determined in the light of the circumstances of the case (see *Gorou v. Greece* (no. 2) [GC], no. 12686/03, § 37, 20 March 2009, with further references).

The Court reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). This obligation presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 185, 6 November 2018, with further reference).

87. An issue in respect of a lack of reasoning in judicial decisions under Article 6 § 1 of the Convention will normally arise when the domestic courts have ignored a specific, pertinent and important point raised by an applicant (see *Buzescu v. Romania*, no. 61302/00, § 67, 24 May 2005, and *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, no. 11161/08, §§ 82-84, 14 January 2021). Moreover, in cases relating to an interference with rights secured under the Convention, the Court will seek to establish whether the reasons provided for decisions given by the domestic courts were automatic or stereotypical (see *Samoylova v. Russia*, no. 49108/11, § 42, 14 December 2021).

88. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 149, 17 October 2019; *De Tommaso v. Italy* [GC], no. 43395/09, § 170, 23 February 2017; and *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd*, cited above, § 81).

(b) Application of the above-mentioned principles in the present case

89. In the present case the Court is called on to examine whether the reasons provided by the domestic courts for their decisions were adequate in terms of Article 6 § 1 of the Convention.

90. The Court observes that the domestic courts annulled the applicant's rights over the buildings and the plot of land and the respective certificates primarily because they declared invalid the exchange contract signed between the applicant and Azintrans.

91. The procedural grounds for the invalidation of the exchange contract were set out in the appellate court's judgment of 7 March 2006. The appellate court stated that Azintrans's request seeking the invalidation of the exchange contract could be admitted for examination because, under Articles 55.1 and 372.5 of the Code of Civil Procedure, a third party could lodge a new claim against one or both parties at any time before a court delivered its judgment, and, under Articles 372.1 and 372.5 of the same Code, the appellate court had the right to examine such a claim.

92. The substantive grounds cited by the courts for the invalidation of the exchange contract and annulment of the applicant's rights and certificates could be summarised as follows. Firstly, the exchange contract signed between the applicant and Azintrans had been invalid in the part concerning the buildings, because before exchanging those buildings for the applicant's shares, the company should have registered them in the register of immovable property kept by the Ministry for Economic Development and obtained a certificate attesting to that. Secondly, the exchange contract had been invalid in the part concerning the plot of land, because before giving over the plot of land to the applicant's use, Azintrans should have obtained permission from the Ministry for Economic Development. Thirdly, as the plot of land had been under the jurisdiction of the Ministry for Economic Development and not of the Municipality, only that Ministry had had the right to sign a land lease agreement with the applicant and issue the respective certificate. Lastly, as of the entry into force of Presidential Decree no. 495 of 11 June 2001, only the Ministry for Economic Development had had the right to register the buildings in question in the relevant State register of immovable property and issue a certificate confirming the ownership right over them. As of the entry into force of Presidential Decree no. 113 of 10 August 2004, that power had belonged to the Immovable Property Registry Service of the Ministry for Economic Development. Therefore, the Baku Property Registration Office had had no right to issue a certificate confirming the applicant's ownership right over the buildings in question.

93. The Court will analyse the above-mentioned procedural and substantive grounds separately, starting with the former.

(i) Whether the procedural grounds provided by the domestic courts for the invalidation of the exchange contract were adequate

94. The Court notes that the exchange contract was signed on 11 July 2003. The contract was executed shortly after its signing, and as a result the applicant received from Azintrans the buildings and the plot of land (see paragraphs 13 and 16 above).

95. However, sometime at the beginning of 2006 Azintrans lodged a claim requesting for the first time the invalidation of the exchange contract (see paragraph 49 above). By the above-mentioned judgment of 7 March 2006 adopted by the Court of Appeal, the claim was both admitted and granted.

96. In that regard, the Court notes that Article 354.2 of the Civil Code – the provision applicable to invalidation claims – stated clearly that the statutory time-limit for claiming the invalidity of a contract was one year from the day on which a claimant became aware or should have become aware of the circumstances serving as the basis for its invalidity (see paragraph 65 above). The Court of Appeal accepted for examination Azintrans's claim some three years after the exchange contract had been signed and,

furthermore, executed. Without considering whether the claim had become time-barred, the appellate court decided to examine it on the sole basis that it was a “new claim” lodged by a “third party”. As the invalidation claim was a “new claim”, brought for the first time during the second set of proceedings before the appellate court, examining its admissibility under Article 354.2 of the Civil Code was essential. Nevertheless, the Court of Appeal utterly ignored that issue. The Supreme Court in its turn failed to examine whether the appellate court had acted lawfully in accepting for examination the claim lodged by Azintrans only in 2006. There is nothing in the decisions of the domestic courts or in the observations of the Government that would justify why the above-mentioned one-year time-limit was not to be applied. In particular, there is no indication in any of the domestic decisions or other case file material suggesting that when the exchange contract was signed or executed, Azintrans was not aware of the circumstances that it later advanced as the alleged reasons for the invalidity of that contract.

(ii) Whether the substantive grounds provided by the domestic courts for the invalidation of the exchange contract and annulment of the applicant’s rights and certificates were adequate

97. The Court notes that prior to the establishment of Azintrans the buildings and the plot of land had been in possession of a State-owned firm, *Azər xaricinəqliyyat*, as was confirmed by the technical passport dated 13 April 1998, which served as an inventory-technical document stipulating what part of State property had been allocated to a particular State-owned firm. Then they were transferred to Azintrans as a result of the privatisation of *Azər xaricinəqliyyat*.

98. Even though under the domestic law the technical passport dated 13 April 1998 was not a document confirming the ownership right of Azintrans over the buildings or the company’s right to use the plot of land, it (the technical passport) demonstrated that those assets constituted the ones lawfully possessed by Azintrans, as the legal successor to *Azər xaricinəqliyyat*. This fact was never disputed by Azintrans or by the domestic courts.

99. Furthermore, under the relevant domestic legislation (see, in particular, paragraphs 77-81 above), a valid technical passport issued in respect of assets possessed by a privatised enterprise gave rise to important legal consequences. Thus, for example, a person holding such a technical passport in respect of a building could apply for the registration of his or her ownership right over that building in a register of immovable property, provided that all the other documents submitted at the same time were also in order. Such a technical passport could also officially delineate the boundaries of a plot of land lying underneath a privatised enterprise. Furthermore, a person holding a valid technical passport could apply to lease that plot of land, and – provided that that person was not a foreigner – he or she could also use

his or her priority right to buy that plot of land (compare, *mutatis mutandis*, *Maharramov v. Azerbaijan*, no. 5046/07, §§ 47-55, 30 March 2017; *Sargsyan v. Azerbaijan* [GC], no. 40167/06, §§ 185-98, ECHR 2015; and *Chiragov and Others v. Armenia* [GC], no. 13216/05, §§ 138-43, ECHR 2015, where technical passports were considered to constitute evidence of title to buildings and land).

100. Against this background it is clear that even though at the time of the signing of the exchange contract Azintrans had only a technical passport dated 13 April 1998 in respect of the buildings and the plot of land, the circumstances of the present case were different from those regarding situations where an exchange contract or other form of transaction concerned unlawfully obtained assets.

101. As noted in paragraph 92 above, the substantive reasons for the invalidation of the exchange contract in question were that there had been irregularities on the part of Azintrans, which had failed to apply to the Ministry for Economic Development to have its ownership right over the buildings registered and to obtain the respective certificate before exchanging those buildings for the applicant's shares and to ask the same Ministry's permission before transferring to the applicant its (that is, Azintrans's) right to use the plot of land. The certificates obtained by the applicant were annulled primarily because the exchange contract had been invalidated and, secondly, because the applicant had obtained those certificates not from the Ministry for Economic Development, but from bodies that had had no power to issue them.

102. In that regard, the Court notes that from the relevant domestic legislation (see, in particular, paragraphs 70-76, and 79-80 above) it follows that at the material time (both at the time of the signing of the exchange contract in question and at the time of examination of the case by the domestic courts) the Ministry for Economic Development was the authority that had the main powers and responsibilities in respect of (i) the management of the privatisation process, (ii) the protection of the State's proprietary rights and interests, (iii) the registration of various rights over immovable property, and (iv) the issuance of relevant certificates. Therefore, it appears that in the present case all the relevant permits, registrations and certificates should have indeed been obtained from the Ministry for Economic Development.

103. However, the Court also notes that during the domestic court proceedings, the Ministry for Economic Development made submissions in favour of the applicant. The Ministry supported the judgments of the first-instance court and opposed Azintrans's appeal. It also emphasised the fact that the applicant had made investments in the buildings and the plot of land. Nevertheless, the appellate court either misrepresented the position of the Ministry for Economic Development by saying that the Ministry's submissions had been in favour of Azintrans (during the first set of proceedings), or simply did not comment on or even mention the Ministry's

position (during the second set of proceedings). Furthermore, the court failed to follow the Supreme Court's instruction to replace the Baku Property Registration Office in the proceedings with a proper respondent (namely, the Ministry for Economic Development). The appellate court did not explain why the above-mentioned irregularities committed by Azintrans and the applicant could not be remedied by the Ministry for Economic Development retroactively and why the only solution to the situation was to return the buildings and the plot of land to Azintrans and to require the applicant to bear all the associated burdens.

(iii) The general manner in which the higher courts examined the case

104. The Court notes that in its judgment adopted during the second set of proceedings when re-examining the case, the Court of Appeal largely replicated the substantive reasoning it had given in its judgment adopted during the first set of proceedings (compare paragraph 54 above with paragraph 35 above, which contains a further reference to paragraph 28). The appellate court failed to remedy any of the main deficiencies referred to by the Supreme Court in the first set of proceedings (see paragraph 44 above). In particular, the appellate court ignored the fact that the Supreme Court had deemed inadequate the reasoning on the basis of which the appellate court had concluded that the applicant's ownership right over the buildings in question should not have been registered at all. The appellate court also failed to comply with the Supreme Court's instruction that the Baku Property Registration Office be replaced as respondent in the proceedings by the Ministry for Economic Development, and failed to ascribe any significance to the fact that that Ministry supported the applicant's position in the case (as was already noted in paragraph 103 above).

105. Despite the appellate court's failure to remedy the above-mentioned deficiencies, the Supreme Court in its final decision of 7 June 2006 repeated almost word-for-word the reasoning given by the appellate court in its judgment of 7 March 2006.

106. Consequently, the Court cannot but conclude that the decisions adopted by the upper instance courts – in particular the Supreme Court's decision of 7 June 2006 – were stereotypical.

(iv) Conclusion

107. In view of its analysis in paragraphs 94-96 above, the Court considers that the domestic courts' admission of the claim requesting the invalidation of the exchange contract was arbitrary (for a similar approach see *Tripkovici v. Montenegro*, no. 80104/13, §§ 42-46, 7 November 2017).

108. Furthermore, in view of its analysis in paragraphs 97-106 above, the Court finds that the domestic courts failed to provide adequate substantive

grounds for their decision to invalidate the exchange contract and to annul the applicant's rights and certificates.

109. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

110. The applicant complained under Article 1 of Protocol No. 1 to the Convention that as a result of the unfair domestic proceedings his right to the peaceful enjoyment of his possessions had been violated, as he had lost his buildings and the plot of land. The applicant also complained of the fact that instead of ordering Azintrans to return to him his 3,800 shares, the domestic courts had ordered it to pay him the value of those shares. Article 1 of Protocol No. 1 to the Convention reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

111. The Government argued that the domestic proceedings had been fair and that there had been no unlawful interference with the applicant's rights under Article 1 of Protocol No. 1 to the Convention.

112. The applicant maintained his complaint.

113. Having regard to the nature and the scope of its findings under Article 6 § 1 of the Convention and noting that the present complaint is based on essentially the same arguments relating to the fairness of the proceedings as the complaint under Article 6 § 1, the Court considers that there is no need to give a separate ruling on the admissibility and merits of the present complaint (see, among many other cases, *Mazahir Jafarov v. Azerbaijan*, no. 39331/09, § 57, 2 April 2020).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

114. The applicant complained under Article 6 § 1 of the Convention that Azintrans had lodged its appeal (see paragraph 27 above) in June 2005 against the first-instance court's judgments of 15 July and 22 July 2004 belatedly, in breach of the relevant domestic procedural law (see paragraphs 58-59 above), and that the domestic courts had acted unlawfully when they had admitted that appeal for examination. The applicant also argued that his right to be informed of and to participate effectively in the hearing before the Court of

Appeal of 7 March 2006 had been violated. The relevant part of Article 6 § 1 of the Convention reads:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing ...”

115. The Government argued that the applicant had failed to exhaust the available domestic remedies in respect of both of the above-mentioned complaints. They also contested the applicant’s submissions on the merits.

116. The applicant maintained his complaints on the merits, without making any submissions as to the admissibility.

117. Having regard to the material in the case file and the submissions of the parties, the Court considers that the applicant failed to demonstrate that he had exhausted the available domestic remedies in respect of the present complaints, in particular that he had raised those complaints in his cassation appeal against the judgment of 7 March 2006 (no copy of that cassation appeal was submitted to the Court, see paragraph 55 above). The Court therefore considers that these complaints are inadmissible for non-exhaustion of domestic remedies and must be rejected under Article 35 §§ 1 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 46 OF THE CONVENTION

118. Under Article 46 §§ 1 and 2 of the Convention, a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a duty to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be taken in its domestic legal order to end the violation and make all feasible reparation for its consequences by restoring as far as possible the situation which would have obtained if it had not taken place (see, among other authorities, *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I; *Roman Zakharov v. Russia* [GC], no. 47143/06, § 311, ECHR 2015; and *Ekimdzhiev and Others v. Bulgaria*, no. 70078/12, § 427, 11 January 2022).

119. The Court has no competence to order the reopening of domestic proceedings (see *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 89, ECHR 2009; *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, §§ 48-49, 11 July 2017; and *Tsonyo Tsonev v. Bulgaria (no. 4)*, no. 35623/11, § 61, 6 April 2021).

120. It has, however, many times observed that when someone has been the victim of proceedings entailing a breach of Article 6 of the Convention, a reopening of those proceedings, if requested, is in principle an appropriate way of redressing the breach (see, for example, in the context of civil proceedings, *Cudak v. Lithuania* [GC], no. 15869/02, § 79, ECHR 2010, and *Inmobilizados y Gestiones S.L. v. Spain*, no. 79530/17, § 45, 14 September 2021). This is particularly so when the breach has consisted in an arbitrariness.

121. At the same time, the execution of the Court's judgments should not unduly upset the principles of *res judicata* and legal certainty in civil litigation, in particular where such litigation concerns third parties with their own legitimate interests to be protected (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 57, ECHR 2015, and *Beg S.p.a. v. Italy*, no. 5312/11, § 162, 20 May 2021). The lapse of time since the domestic decisions complained of is also a material consideration in that regard (see *Bochan (no. 2)*, cited above, § 72).

122. In the present case, the Court notes that under the domestic law (see paragraph 61 above) the applicant has the right to ask for a reopening of his case. However, the Court also notes that the lapse of time since the domestic decisions complained of might have rendered their annulment and a reversal of their effects problematic. Consequently, it will be the task of the competent domestic court, should it be seized of a reopening request, to evaluate all circumstances of the case and to choose the appropriate means to ensure the maximum possible reparation. This would then be subject to supervision by the Committee of Ministers which is better placed than the Court to assess the specific measures taken (see *Ilgar Mammadov*, (infringement proceedings) [GC], no. 15172/13, § 155, 29 May 2019, with further references therein).

123. Any such domestic proceedings should, however, be compatible with the conclusions and spirit of the Court's judgment (see *Ilgar Mammadov*, cited above, § 149).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

124. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

125. The applicant claimed 5,196,638 euros (EUR) in total in respect of pecuniary damage (EUR 2,474,922 for the plot of land, EUR 499,494 for the buildings, and EUR 2,222,222 for alleged lost profit). The applicant also claimed EUR 250,000 in respect of non-pecuniary damage.

126. The Government argued that the applicant's claims in respect of pecuniary and non-pecuniary damage were unsubstantiated (as he had failed to submit any evidence), and in any event excessive. The Government asked the Court to reject those claims.

127. The Court notes that it has found a violation of Article 6 § 1 of the Convention on account of the arbitrariness and the lack of adequate reasoning

by the domestic courts. It further reiterates that under the domestic law (see paragraph 61 above) the applicant has the possibility to ask for reopening of his case. Therefore, the Court rejects the applicant's claim in respect of pecuniary damage. However, ruling on an equitable basis, the Court awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

128. The applicant claimed EUR 2,350 for costs and expenses incurred for the domestic proceedings and for the proceedings before the Court (EUR 2,000 for legal assistance, EUR 100 for notary services and court fees, and EUR 250 for postal and communication services).

129. In support of his claim, the applicant submitted two receipts, dated 18 March 2011 and 18 January 2012, according to which he had paid on each of those dates 500 Azerbaijani manats (AZN) for legal services provided by his representative, Mr J. Suleymanov; consequently, the applicant claimed a total of AZN 1,000 for those services, which at the material time was equivalent to approximately EUR 950. The applicant also submitted several receipts concerning certain notary and postal services.

130. The Government argued that the applicant had failed to demonstrate that the two receipts confirming the two payments amounting to AZN 1,000 concerned the present case because, at the time of those payments, the domestic proceedings had already been finalised, and the Government had yet to be notified of the application lodged by the applicant with the Court. The Government also argued that the other receipts submitted by the applicant had been paid by third parties or had clearly not concerned the present case. The Government asked the Court to reject the claim for lack of proper documentary proof.

131. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim in the part concerning the court fees and notary, postal, and communication services; however, the Court considers it reasonable to award the sum of EUR 950 to the applicant in respect of the legal services rendered by Mr J. Suleymanov, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the right to a reasoned judgment under Article 6 § 1 of the Convention admissible;

2. *Holds* that there has been a violation of the applicant's right to a reasoned judgment under Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the other complaints under Article 6 of the Convention;
4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 1 of Protocol No. 1 to the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 950 (nine hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 1 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Deputy Registrar

Marko Bošnjak
President